

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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CHERYL CLAYBROOKS,

Plaintiff,

v.

Case No. 10-C-404

WILLIAM L. GERARD,

Defendant.

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**ORDER**

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The plaintiff, Cheryl Claybrooks, who is proceeding pro se, filed this action on May 11, 2010. The plaintiff alleges that the defendant, William L. Gerard, discriminated against her apparently on the basis of her race in violation of Title IV of the Civil Rights Act of 1964, 42 U.S.C. §2002 et. seq. as amended.

On October 1, 2010, the defendant filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). The defendant filed an affidavit in support of his motion. Civil Local Rule 56 (E.D. Wis.) provides:

(a) Pro Se Litigation

(1) If a party is proceeding pro se in civil litigation, and the opposing party files a motion for summary judgment, counsel for the movant must comply with the following procedure:

(A) The motion must include a short and plain statement that any factual assertion in the movant's affidavit(s) or other admissible documentary evidence will be accepted by the Court as being true unless the party unrepresented by counsel submits the party's own affidavit(s) or other admissible documentary evidence contradicting the factual assertion.

(B) In addition to the foregoing statement, the text to Fed.R.Civ.P. 56(e) and (f), Civil L.R. 56.1 and Civil L.R. 7.1 must be part of the motion.

(2) This procedure also applies to motions to dismiss brought pursuant to Fed. R. Civ. P. 12(b)(6) or motions for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) where matters outside the pleading are presented to the Court.

The defendant submitted matters outside the pleadings in support of the motion to dismiss.

The defendant's motion, however, does not provide plaintiff the notice required by the Local Rules.

Given the defendant's failure to provide the required notice, the defendant's motion to dismiss will be denied without prejudice. The defendant may refile his motion to dismiss after providing the plaintiff with the proper notice. The defendant need not refile the supporting memorandum of law or the declaration of William L. Gerard.

### **CONCLUSION**

**NOW, THEREFORE, IT IS ORDERED** that the defendant's motion to dismiss be and hereby is **denied without prejudice and with leave to refile as set forth herein.** (Docket #10).

Dated at Milwaukee, Wisconsin this 19th day of October, 2010.

BY THE COURT:

s/Patricia J. Gorence  
PATRICIA J. GORENCE  
United States Magistrate Judge